IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

MACA.No. 2176 of 2006()

OPMV.1504/2002 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA

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APPELLANT/3RD RESPONDENT IN O.P.(MV)

UNITED INDIA INSURANCE CO.LTD., THODUPUZHA BRANCH REPRESENTED BY THE MANAGER, OFFICE OF THE REGIONAL MANAGER, UNITED INDIA INSURANCE CO.LTD., HOSPITAL ROAD, ERNAKULAM.

BY ADV. SRI.M.A.GEORGE

RESPONDENTS: PETITIONER & RESPONDENTS1,2,4,5 & 6:

1. SOMAN NAIR,S/O.PARAMESWARAN NAIR, RESIDING AT THAYYIL HOUSE, POOVAKULAM KARA, VELIYANNOOR VILLAGE.

2. SREEKUMAR, KOCHILEDATH HOUSE, METHIRY, RAMAPURAM, KOTTAYAM.

3. SHIJUMON @ SHIJU S/O.RAGHAVAN, MARAMKUZHIYIL HOUSE, POOVAKULAM, KARAMALA P.O., VELIYANNOOR VILLAGE, KOTTAYAM.

4. CYRIAC, THEKKUMPERUMALIL HOUSE, RAMAPURAM, AMANAKARA P.O.

5. SHAJI @ SABU S/O.AUGUSTIAN, THOTTUMKAL HOUSE, VELLILAPPILLI VILLAGE, KOTTAYAM.

6. THE NEW INDIA ASSURANCE COMPANY LIMITED,
IST FLOOR, MUNICIPAL SHOPPING COMPLEX,
MAIN ROAD PALA.

BY ADV. SRI.K.JAJU BABU
SRI.ANIL S.RAJ
SMT.MANJUSHA MOHANDAS
SMT.ANILA PETER
SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 2176 OF 2006

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Dated this the 5th October, 2007

J U D G M E N T

Initially this appeal was disposed of by me. It was found that in this case the Insurer cannot be made liable for indemnifying the insured. But the Insurer was directed to pay the amount awarded and then recover the same from the insured, if so advised. Thereafter the case was posted for spoken to. After hearing both sides, the judgment dated 13.8.2007 was reviewed and recalled. The matter was again heard today.

2. This appeal is filed by the third respondent-Insurer in O.P(MV) No.1504 of 2002 on the file of the Motor Accidents Claims Tribunal, Muvattupuzha.

3. First respondent, petitioner, filed a petition claiming compensation alleging that he sustained injuries in a motor vehicle accident occurred on 7.6.2002. It was averred that petitioner was travelling in a Maruti van bearing Reg.No.KL-7/T-3670 driven by the second respondent from Muvattupuzha to Koothattukulam. It was averred that collision took place

between the vehicle in which the first respondent was travelling and a Jeep bearing Reg. No.KL-5/J-6687 driven by the 5th respondent which came from the opposite direction. Petitioner sustained injuries. Petitioner impleaded the owners, driver and Insurers of both the vehicles alleging that the accident occurred due to the negligence of both the drivers. Compensation was claimed from all the respondents. Respondents 2 and 3 filed a joint written statement. The ownership of the vehicle was admitted. It was contended that the vehicle was insured with the appellant and the vehicle was driven by the third respondent. They contended that the Insurer is liable to pay the amount awarded. Insurer, third respondent in the O.P., filed a written statement admitting that the vehicle was having a valid policy of insurance. But it was contended that the policy issued will not cover the risk of a gratuitous passenger and hence it was not liable to pay the compensation awarded. Owner, driver and Insurer of the Jeep remained ex parte.

4. Tribunal, after considering the evidence adduced, found that the accident occurred due to the negligence of the

driver of the Maruti Van. Tribunal also found that the petitioner is entitled to get a sum of Rs.32,200/- as compensation. Relying on the principle laid down in Oriental Insurance Co. v. Ajayakumar (1999 (2) KLT 886) Tribunal found that though the petitioner was a passenger in a private vehicle, directed the appellant to pay the compensation. Challenging that finding, this appeal is filed.

5. I do not find any reason to interfere with the findings of the Tribunal that the accident occurred due to the negligence of the driver of the Maruti Van and the petitioner is entitled to a compensation of Rs.32,200/-. That findings have become final and conclusive. The only question arising for consideration is whether the appellant can be made liable to pay compensation.

6. The appellant-Insurer contented that the petitioner was a gratuitous passenger in a private vehicle and hence it is not liable to pay compensation. It is also argued that the policy issued was only an act only policy. But the Insurer did not produce the policy before the Tribunal. Policy was produced only before this Court which is marked as Exhibit B1,

which would show that it was only an act only policy and no extra premium was paid to cover the risk of passengers. In National Insurance Co. Ltd. v. Swaran Singh (2004 (1) KLT 781 (SC) it was held that gratuitous passenger in a private car is not entitled to get compensation from the company. In National Insurance Co. Ltd. v. Laxmi Narain Dhut (2007 (2) KLT 470 (SC) the Apex Court held as follows:

> "It is also to be noted that the terms of the policy have to be construed as it is and there is no scope for adding or subtracting something. However, liberally the policy may be construed, such liberalism cannot be extended to permit substitution of words which are not intended (See *United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal* (2004 (3) KLT 560 (SC) = (2004) 8 SCC 644 (SC) and *Polymar India (P) Ltd. v. National Insurance Company Ltd. and Ors.* (2005) 9 SCC 174)".

7. So in this case it is not possible to make the Insurer liable for indemnifying the insured. In view of the legal position stated above, in this case, the Insurer has no liability to indemnify the insured. Owner and driver are responsible to pay the compensation.

8. In the result, the appeal is allowed in part. The

finding of the Tribunal that the petitioner is entitled to get a compensation of Rs.32,200/- is confirmed. But the award passed by the Tribunal directing the appellant to pay the compensation awarded is set aside and modified allowing the first respondent claimant to recover the amount awarded from the owner and driver.

Interlocutory Application No.2420 of 2006 will stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 2176 OF 2006

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J U D G M E N T

5TH OCTOBER, 2007